

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure and this Court's Local
2 Rules, on May 12, 2008 Plaintiffs The Laryngeal Mask Company Ltd. and LMA North
3 America, Inc. (collectively "LMA") and Defendants/Counterclaimants AMBU, INC., AMBU
4 A/S, AMBU LTD., and, AMBU SDN.BHD. (collectively "AMBU") conducted the required
5 conference of counsel and hereby jointly file this report outlining the agreed case schedule
6 and discovery plan, and setting forth any unresolved issues for further consideration by the
7 Court.

8 **I. BACKGROUND**

9 This is a patent infringement case in which LMA asserts that United States Patent No.
10 7,156,100 ("the '100 patent") entitled "Laryngeal Mask Airway Device" is infringed by
11 AMBU's AuraOnce, Aura40, AuraFlex, and AuraStraight brands of laryngeal mask airway
12 devices. LMA seeks damages, enhanced damages for willful infringement, and a permanent
13 injunction against AMBU. AMBU has denied infringement of the '100 patent and has
14 asserted affirmative defenses and counterclaims for patent invalidity and non-infringement.
15 Additionally, AMBU SDN.BHD. has asserted that it has never had any involvement in the
16 design, manufacture, sales or other conduct related to the accused laryngeal masks and
17 accordingly has asked LMA to voluntarily dismiss it from the case. LMA has not yet
18 indicated whether it will do so, and is investigating the matter.

19 In its First Amended Complaint, LMA also alleged infringement of United States
20 Patent No. 5,303,697 ("the '697 patent") by AMBU. LMA and AMBU have now agreed to
21 dismiss the '697 patent from this lawsuit. The parties are currently preparing a joint motion
22 for dismissal of all claims and counterclaims with respect to the '697 patent.

23 **II. PROPOSED CASE SCHEDULE**

24 The schedule set forth below reflects the agreed upon case schedule by the parties,
25 subject to approval of the Court, including minor modifications to the Patent Local Rule
26 schedule leading up to the Claim Construction Hearing to accommodate certain scheduling
27 conflicts of counsel and major year end holidays.

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EVENT	DEADLINE
FRCP Initial Disclosures [FRCP 26(a)(1)]	May 28, 2008
Submit Confidential ENE Statements	June 3, 2008
ENE/ Initial Case Management Conference	June 10, 2008
Plaintiff's Disclosure of Asserted Claims, Preliminary Infringement Contentions, and Document Production [Patent LR 3.1, 3.2]	June 24, 2008
Defendant's Preliminary Invalidity Contentions and Document Production [Patent LR 3.3, 3.4]	August 25, 2008
Exchange of Preliminary Proposed Claim Constructions and Extrinsic Evidence [Patent LR 4.1.a, 4.1.b]	September 8, 2008
Exchange of Responsive Claim Constructions and Extrinsic Evidence [Patent LR 4.1.c, 4.1.d]	September 22, 2008
Meet and Confer to Narrow Claim Construction Issues [Patent LR 4.1.e]	Before Oct. 6, 2008
Joint Claim Construction Chart, Worksheet and Hearing Statement [Patent LR 4.2]	October 6, 2008
Completion of Claim Construction Discovery [Patent LR 4.3]	November 7, 2008
Exchange of Opening Claim Construction Briefs and Supporting Evidence [Patent LR 4.4.a]	November 25, 2008
Exchange of Responsive Claim Construction Briefs and Rebuttal Evidence [Patent LR 4.4.b]	December 19, 2008
Claim Construction Hearing [Patent LR 4.5]	January 26, 2009 [subject to Court calendar]
Plaintiff's Final Infringement Contentions if appropriate [Patent LR 3.6.a]	within 30 days of Claim Construction Ruling
Disclosure of Opinion re Willful Infringement and related materials [Patent LR 3.8]	within 30 days of Claim Construction Ruling

Defendant's Final Invalidity Contentions if appropriate [Patent LR 3.6.b]	within 50 days of claim construction ruling
Fact Discovery Cut-off	May 15, 2009
Expert Reports due	May 29, 2009
Rebuttal Expert Reports	June 19, 2009
Expert Discovery Cut-off	July 17, 2009
Last Day to File Dispositive Motions	August 14, 2009
Pretrial Disclosures	October 9, 2009
Pretrial Conference	October 30, 2009
Trial	December 7, 2009

III. RULE 26 DISCOVERY ISSUES

A. The parties agreed that no changes need be made to the form of Initial Disclosures, and agreed to serve Rule 26(a)(1) disclosures by May 28, 2008. The parties agreed that they shall identify the location of any witnesses listed on their Initial Disclosures.

B. The parties agreed that discovery may proceed on all issues relevant to infringement, willfulness, validity, enforceability and damages with respect to the '100 patent, and that discovery should not be conducted in phases.

C. The parties agreed that discovery may be provided in electronic form, but presently differ on whether documents may be produced in native format with a separate spreadsheet showing bates numbers and confidentiality designations (AMBU's preference), or must be produced with bates numbers and confidentiality designations provided on the document images, such as in TIFF or PDF format (LMA's preference). The parties will continue to try to resolve this difference.

D. The parties shall include any agreed procedures as to privilege and the protection of trial preparation materials in a stipulated protective order, to be submitted to the Court for approval.

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1 E. The parties discussed proposed changes to normal discovery limitations and
2 reached certain agreements as follows:

3 1. Depositions: The parties agreed that expert depositions should not
4 count towards a party's total allotment of depositions or deposition time, but could not agree
5 on the total allotment of depositions or deposition time for each party.

6 a. LMA's Position: LMA believes that it will need more than 10
7 depositions because there will be at least three or four AMBU defendants involved in this
8 dispute, and also to adequately conduct third party discovery with respect to damages issues
9 as well as depositions of the relevant AMBU party witnesses. For example, there are at least
10 six Group Purchasing Organizations ("GPO's") in the United States through which most
11 hospitals negotiate and purchase the parties' competing products, not to mention the
12 numerous doctors and hospital administrators involved in purchasing decisions. LMA
13 therefore proposes that each side be permitted up to 20 depositions (or 150 total hours and
14 subject to increase for good cause shown) not counting expert depositions, with no single
15 percipient witness exceeding the normal seven hour limit without leave of Court (except as
16 provided below in the case of a deposition witness requiring a translator). LMA further
17 proposes that any time spent deposing an expert witness solely for purposes of claim
18 construction discovery shall not count towards the normal seven hour limit for that same
19 expert witness if later used in the case.

20 b. AMBU's Position: Ambu believes that the standard limit of 10
21 depositions excluding experts should be the presumptive limit, as it is more than adequate for
22 the purposes of this case. In particular, as patent cases go, this is a relatively simple and
23 small one. LMA is proceeding with only one patent; it has accused a single set of products
24 that are similar to one and other; and Ambu has not asserted any of its patents against LMA.
25 Indeed, much larger patent cases involving multiple patents and several different technologies
26 and markets rarely warrant as many depositions as LMA is requesting here.

27 At this early stage in the case there is no justification to exceed the number of
28 depositions the Federal Rules provide for. For example, Ambu believes that there would be

1 no need for depositions of AMBU SDN.BHD. given that that particular entity had no
2 involvement in the design, manufacture, sales or other conduct related to the accused
3 products. And, if in the future, 10 depositions turn out to be too few, the parties may utilize
4 the procedures provided for by the Rules to obtain any further depositions needed.

5 The parties do agree, though, that the presumptive seven hour limit for a witness who
6 must be deposed through a translator shall be increased to 11 hours. In addition, the parties
7 reserve the right to object to a witness testifying in English at trial if he or she testified in
8 another language at his or her deposition.

9 2. Interrogatories: The parties agree that each *side* (rather than each
10 *party*) shall be limited to propounding a total of 25 interrogatories, subject to increase for
11 good cause shown.

12 3. Requests for Admissions: The parties agree that each *side* shall also be
13 limited to propounding a total of 25 requests for admissions (subject to increase for good
14 cause shown), but that requests for admissions going solely to evidentiary issues, such as the
15 authenticity and/or admissibility of evidence as a business record, shall not be counted against
16 the 25 limit.

17 F. The parties shall separately submit to the Court a stipulated form of protective
18 order to address the production and handling of confidential documents and information.

19 **IV. PATENT LOCAL RULE ISSUES**

20 1. The proposed case schedule includes some minor modifications to the Patent
21 Local Rule schedule leading up to the Claim Construction Hearing to accommodate certain
22 scheduling conflicts of counsel and major year end holidays. This has resulted in shifting the
23 Claim Construction Hearing approximately one month from late December 2008 to late
24 January 2009.

25 2. The parties both anticipate presenting live testimony at the Claim Construction
26 Hearing at this time.

27 3. The parties agreed that any declarants, whether expert or percipient witnesses,
28 used for claim construction may be deposed by the other party in advance of the Claim

1 Construction Hearing during the Claim Construction discovery period. The parties further
2 agreed that any time spent deposing percipient witnesses for claim construction purposes will
3 count towards the normal seven hour maximum of deposition time for that witness.

4 4. The parties agreed that LMA as plaintiff may present first at the Claim
5 Construction Hearing, subject to the wishes of the Court.

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7 Respectfully submitted,

8 KNOBBE, MARTENS, OLSON & BEAR, LLP

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10 Dated: May 28, 2008

By: s/Frederick S. Berretta

11 John B. Sganga
12 jsganga@kmob.com
13 Frederick S. Berretta
14 fberretta@kmob.com

15 Attorneys for Plaintiffs
16 THE LARYNGEAL MASK COMPANY LTD.
17 and LMA NORTH AMERICA, INC.

18 FENWICK & WEST LLP

19 Dated: May 28, 2008

By: s/Darryl M. Woo

20 Darryl M. Woo
21 dwoo@fenwick.com
22 Charlene M. Morrow
23 cmorrow@fenwick.com

24 Attorneys for Defendants/Counterclaimants
25 AMBU A/S, AMBU INC., AMBU LTD., and
26 AMBU SDN. BHD.

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2008, I caused the foregoing **JOINT REPORT OF FRCP RULE 26(f) CONFERENCE OF COUNSEL AND PROPOSED DISCOVERY PLAN** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to the applicable registered filing users.

Darryl M. Woo
dwoo@fenwick.com
Ryan J. Marton
rmarton@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco CA 94104
T: 415-875-2300
F: 415-281-1350

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Dated: May 28, 2008


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